

Aviation Drug/Alcohol Abatement *UPDATE*

August 1994

No. 94-3

The Drug Abatement Division has changed the name of this newsletter to reflect the inclusion of information about the alcohol misuse prevention program and modified the format to separate antidrug program issues from alcohol misuse prevention program implementation issues. Additionally, the FAA is also mailing this newsletter directly to all Medical Review Officers (MRO) to keep them informed about program issues.



Antidrug Program



SPECIMEN COLLECTION PROCEDURES REVISED

The Omnibus Transportation Employee Testing Act of 1991 requires the "split specimen" method for collecting urine specimens for drug testing. The DOT has amended 49 CFR part 40 to include split specimen collection and analysis procedures.

Split Specimen Procedures

The rule makes the collection of split specimens mandatory on August 15, 1994, for all aviation employers. Under the amended FAA rule, the right of an

employee to a retest of the *original* specimen has been eliminated. Split specimen testing will be in lieu of that right.

The total amount of urine required to be collected from an employee has been reduced to a 45 milliliter (mL) minimum (30 mL for the primary specimen and 15 mL for the split specimen). The specimen can be collected in a collection container or single specimen bottle. Both bottles are to be shipped in a single shipping container, together with the appropriate copies of the custody and control form, to the DHHS-certified laboratory responsible for testing the primary specimen.

If the result of the *primary* specimen is confirmed positive, the medical review officer (MRO) must notify the employee that if he/she wishes to have the split specimen tested, the employee has up to **72 hours** after receiving notice that the MRO has verified the test as positive in which to exercise his/her option to request a test of the split specimen. The request by the employee does not have to be in writing. If

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the employee requests that the split specimen be tested, the MRO shall direct the laboratory in writing to forward the specimen to a **different** DHHS-certified laboratory. The second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such testing is conducted without regard to the cutoff levels in 49 CFR section 40.29(f). The result of the split specimen test is to be transmitted by the second laboratory to the MRO.

If the employee has not contacted the MRO within the 72 hours, the employee may present information to the MRO documenting that the failure to make a timely request was caused by circumstances beyond the employee's control. If the MRO concludes that there is a legitimate explanation, then the MRO shall direct the analysis of the split be performed.

The MRO cannot delay verification of a test result just because an employee has requested that the split specimen be tested. Employer or agency action after verification is not stayed during the request period or while waiting for split specimen test results. If the result of the split specimen *fails to reconfirm* the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall *cancel the test*, and report the cancellation and the reasons for it to the DOT Office of Drug Enforcement and Program Compliance, the employer, and the employee.

Inability to Provide Sufficient Urine Quantity

If the donor is unable to provide 45 mL of urine, the collection site person shall discard the insufficient specimen and

instruct the individual to drink up to 24 ounces of fluid. After a period of up to 2 hours, the collection site person should again attempt to obtain an adequate sample using a fresh collection container. If the individual is still unable to provide an adequate sample, the insufficient specimen shall be discarded, testing discontinued, and the employer notified. Additionally, the MRO shall refer the individual for a medical evaluation to determine whether the inability to provide a sample is genuine or constitutes a refusal to test. Upon completion of the examination, the MRO shall report the conclusions to the employer in writing.

NOTE: In pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make a referral for a medical evaluation.

PLAN AMENDMENT REQUIRED

As a result of the preceding changes to 49 CFR part 40, employers or their consortia are required to submit antidrug plan amendments to the Drug Abatement Division *identifying the DHHS-certified laboratory (or laboratories) that will test the split specimens. If the employees will have the option of selecting any DHHS-certified laboratory to test the split specimen, the amendment should just contain a statement to that effect.*

The selection of the second laboratory for testing of split specimens and the assumption of financial responsibility for the tests may be an employer-employee decision. It should be noted that such decisions may be subject to bargaining agreements. Consortia must work with employers to determine how the second laboratory will be selected and may not

simply select a laboratory on behalf of their members.

Even though the employee may be permitted to choose the laboratory, it remains the responsibility of the MRO to ensure that the selected laboratory is DHHS-certified and to direct in writing that the split specimen be released to the second laboratory.

DRUG PROGRAM STATISTICAL REPORTS

The amended reporting requirements that were effective January 1, 1994, require that only **part 121 certificate holders and all other companies with 50 or more covered employees on January 1 of the reporting year**, submit an annual statistical report to the FAA by March 15 each year, starting in 1995. Companies with fewer than 50 covered employees are not required to submit reports unless they are randomly selected and notified by the FAA.

SEMIANNUAL REPORTS ARE NO LONGER REQUIRED TO BE SUBMITTED BY ANY COMPANY.

See Special Edition Update (January 1994) on Antidrug Reporting Requirements for additional information.

ANTIDRUG PROGRAM RECORDS

In the November 1993 *Update*, we discussed the transfer of MRO records when a company changes its MRO. That article failed to address MRO records transfer when a consortium changes MROs. If a consortium changes MROs, the consortium must ensure that the former

MRO turns over all records (except confidential employee medical records not associated with the antidrug program) to the new MRO. If the MRO is working for an FAA-approved consortium, the records may be transferred without each employer specifically requesting the transfer. The consortium should provide the MRO with a list of current members to ensure that only the records of those employers are transferred.

REPAIR STATION POST-ACCIDENT DRUG TESTING NOT MEETING PROPER CRITERIA

The FAA is finding that many repair stations and other maintenance contractors are conducting drug tests on employees for accidents that do not meet the criteria in the antidrug regulations for post-accident testing. For example, an employee who drops a hammer on his or her foot in a maintenance shop or one who runs a cart into a hangar water fountain are not to be given "post-accident" drug tests under the auspices of the FAA regulations.

The definition of "accident" under the antidrug regulations is an ***occurrence associated with the operation of aircraft which takes place between the time any person (crew or passenger) boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage.***

Employers may test employees after any other occurrence only under their own company policy and must ensure that the employees are aware of the distinction

between FAA regulatory requirements and company policy.

BLIND PERFORMANCE TESTING

Employer blind performance tests are quality control specimens introduced into the laboratory drug testing system by the employer to check the accuracy of the laboratory process. The blind performance testing requirements do not duplicate DHHS certification measures that require testing of control samples because the laboratories know which specimens are submitted by DHHS. Each employer, regardless of size, shall be responsible for the submission of blind performance specimens. However, consortia shall be responsible for the submission of blind specimens on behalf of their members. DHHS-certified laboratories may not submit blind performance specimens for employers/consortia since this would defeat the purpose of blind performance testing. The blind samples must be submitted in such a manner that the laboratory cannot differentiate them from actual employee specimen samples.

For every 100 covered employee specimens tested, 3 blind specimens are to be submitted, with a maximum of 100 per quarter. For employers with more than 2,000 covered employees 20 percent of the specimens are to contain one or more drugs; the remainder are to be blank (i.e., contain no drug). Employers with fewer than 2,000 covered employees need only submit blank samples. To ensure that the blind performance testing program effectively monitors the laboratory's performance, the specimens should be submitted over the period of time it takes

for the employer to submit 100 employee specimens.

The samples with known quantities of a drug can be purchased. For blank specimens, a specimen can be collected from a non-covered employee that is split into two specimens. When using the split specimen from a non-covered employee, both specimens are bottled, sealed and documented as individual separate specimens. Each split specimen (processed as two separate specimens) "counts" as *one* blind performance specimen.

RULEMAKING DOCUMENTS PUBLISHED

On February 15 the DOT and FAA published a number of significant rulemaking documents. We have identified them on pages 10-11 of this *Update*.

LABORATORY SUSPENSIONS/WITHDRAWALS

The following drug testing laboratories have recently withdrawn from the National Laboratory Certification Program and are no longer DHHS-certified.

Saint Joseph Hospital Toxicology Laboratory

601 N. 30th Street
Omaha, NE 68131-2197
WITHDREW - AUGUST 12, 1994

Hermann Hospital Toxicology Laboratory

Hermann Professional Building
6410 Fannin, Suite 354
Houston, TX 77030
WITHDREW - JULY 8, 1994

Precision Analytical Laboratories, Inc.

13300 Blanco Road, Suite #150
San Antonio, TX 78216
WITHDREW - JUNE 16, 1994

National Health Laboratories**Incorporated**

75 Rod Smith Place
Cranford, NJ 07016
WITHDREW - JUNE 15, 1994

**SmithKline Beecham Clinical
Laboratories**

11636 Administration Drive
St. Louis, MO 63146
WITHDREW - MAY 1, 1994

Mayo Medical Laboratories

200 S.W. First Street
Rochester, MN 55905
WITHDREW - APRIL 15, 1994

Damon/MetPath

140 East Ryan Road
Oak Creek, WI 53154
WITHDREW - MARCH 1, 1994

Roche Biomedical Laboratories

1957 Lakeside Parkway, Suite 542
Tucker, GA 30084
WITHDREW - FEBRUARY 14, 1994

Clinical Pathology Facility, Inc.

711 Bingham Street
Pittsburgh, PA 15203
WITHDREW - JANUARY 31, 1994

Resource One, Inc.

Seven Pointe Circle
Greenville, SC 29615
WITHDREW - JANUARY 21, 1994

**IHC Laboratory Services Forensic
Toxicology**

930 North 600 West, Suite E
Provo, UT 84606
WITHDREW - DECEMBER 31, 1993

MEDTOX Bio-Analytical

8600 West Catalpa Avenue
Chicago, IL 60656
WITHDREW - DECEMBER 31, 1993

Roche Biomedical Laboratories

1801 First Avenue South
Birmingham, AL 35233
WITHDREW - NOVEMBER 19, 1993

Parke DeWatt Laboratories

Division of Comprehensive Medical Systems, Inc.
1810 Frontage Road
Northbrook, IL 60062
WITHDREW - OCTOBER 1993

If a laboratory withdraws from the certification program or surrenders its approval, aviation employers **must** select another DHHS-certified laboratory. To verify the certification status of a laboratory, DHHS has established a telephonic Helpline -- (800) 843-4971.

**MRO UNABLE TO REACH
DONOR**

A recent MRO publication issued incorrect guidance concerning procedures to follow when the MRO is unable to contact the donor. Therefore, to clarify any confusion, proper procedures, as contained in 49 CFR part 40, are outlined below.

The MRO must make all reasonable efforts to contact an employee with a positive test result to give the employee the opportunity to discuss the test result. If the MRO is unable to contact the employee after making these efforts, and documenting them, the MRO should contact the employer designated management official and request the employer to direct the employee to contact the MRO as soon as possible. The management official shall

ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

If, after making all reasonable efforts, the employer cannot reach the employee within a reasonable time, the employer may place the employee on medical leave or temporary medically unqualified status.

If the management official does contact the employee, the contact should be documented, and the employee instructed to call the MRO. The MRO shall declare the test a verified positive if, after five days have passed from a documented contact instructing the employee to talk to the MRO, the employee has not done so.

To protect the employee, information may be presented to the MRO documenting that serious illness, injury, or other circumstances prohibited the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test result. If the MRO

concludes that there is a legitimate explanation, the MRO declares the test to be negative.

BRIEFLY...

PLAN NUMBER, PLEASE

Employers should put their antidrug plan number on all correspondence submitted regarding their antidrug program. The Drug Abatement Division receives many plan amendments without any identifying information, making it difficult and time consuming to process them.

ATTENTION CONSORTIA PROGRAM MANAGERS

Consortia are reminded to promptly notify the FAA when member companies are dropped or leave the consortium. In the February 15 notice of proposed rulemaking (see page 10) the FAA proposed requiring that membership changes be submitted to the FAA within 10 working days.



Alcohol Misuse Prevention Program



ALCOHOL CERTIFICATION STATEMENTS DUE

Aviation employers are reminded that certification statements should have been submitted to the Drug Abatement Division by *July 1* for all part 121 certificate holders, part 135 certificate holders with more than 50 covered employees, and covered air traffic control facilities. If you

were required to submit a certification statement by that date and have not done so, you should do so immediately.

Employers are reminded to submit the statements in duplicate. The Drug Abatement Division returns a "date received" stamped copy to employers. (Refer to Special Edition-Alcohol Misuse

Prevention Program *Update* for sample certification statements.)

CONFORMING PRODUCTS LIST

Alcohol testing required by the FAA alcohol misuse prevention program must be conducted using *only* **evidentiary breath testing (EBT) devices** approved by the National Highway Traffic Safety Administration (NHTSA) and listed on their Conforming Products List (CPL). Employers may only use instruments on the CPL **not** marked with an asterisk. Please keep in mind that just because an EBT is listed on the CPL does not mean that it meets all of the requirements for *confirmation* testing, i.e., print results in triplicate, print a sequential test number, etc. To assist you in selecting an EBT, a copy of the latest CPL published in the Federal Register on April 20, 1994 is attached to this *Update*.

BREATH ALCOHOL TECHNICIAN TRAINING CURRICULUM

The individual, referred to as a breath alcohol technician (BAT), who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT) must be trained to proficiency in the operation of the EBT he/she is using and the DOT alcohol testing procedures.

The DOT has developed a model curriculum that meets requirements for the instruction and training of BATs. The materials are available from the Government Printing Office and consist of a BAT Instructor Training Curriculum and a BAT Student Handbook.

To order the materials call (202) 783-3238 or any GPO bookstore, or write to the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371.

BAT Instructor Training
Curriculum - GPO # 050-000-00551-8 \$19.00
(Includes student handbook)

BAT Student Handbook (only) -
GPO # 050-000-00550-0 \$7.50

QUESTIONS AND ANSWERS

Q1: Are incumbent employees required to undergo pre-employment testing prior to the implementation date of the alcohol misuse prevention program (AMPP) for their current employer? Are they required to undergo pre-employment testing for a subsequent employer if they change employers in the future?

A: Incumbent employees are **not** required to undergo pre-employment testing prior to the implementation date of the AMPP for their current employer. Individuals who are hired after an employer's implementation date must undergo pre-employment testing prior to the first time they perform a safety-sensitive function for that employer. However, under an exception to the general rule, a subsequent employer may elect not to administer a pre-employment test if the employee has had an alcohol test conducted under any operating administration alcohol misuse rule following 49 CFR part 40 procedures with a result less than 0.04 within the

previous six months and the employer ensures that no prior employer of whom the employer has knowledge has records showing a violation of these rules. (14 CFR part 121, appendix J, III, A)

Q2: Each employer shall provide a company policy that includes educational materials and explains alcohol misuse to each covered employee. What information must the material include? What is the acceptable means of dissemination?

A: The rule requires each employer to ensure that each employee receives educational materials that explain the alcohol misuse prevention requirements and the employer's policies and procedures with respect to meeting those requirements *prior to the start of alcohol testing*. Each employer is required to provide written notice to representatives of employee organizations concerning the availability of this information.

Under the rule, the materials must include:

- Identity of a contact person to answer questions.
- Categories of employees subject to the AMPP.
- Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day each covered employee is required to be in compliance with the alcohol misuse requirements.
- Prohibited employee conduct.

- Testing circumstances.
- Testing procedures.
- The requirement to submit to alcohol tests.
- Explanation of what constitutes a refusal to submit to an alcohol test.
- Consequences for violations of the prohibitions (including refusals).
- Consequences for alcohol concentration of 0.02 or greater but less than 0.04.
- Information on the effects of alcohol misuse, signs and symptoms of alcohol misuse, intervention methods, employee assistance program.

Optional Provisions. The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of 14 CFR part 121, appendix J. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

Q3: When should existing employees receive the educational information required by appendix J? What about new hires or transfers?

A: The employer shall ensure that a copy these materials is distributed to each covered employee *prior to the start of alcohol testing* under the

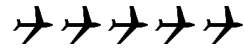
employer's FAA-mandated AMPP and to each person subsequently hired for or transferred to a covered position.

Q4: Every company is required to ensure that each covered employee who engages in alcohol misuse or who refuses to submit to testing be advised of all resources available to the employee. What does this mean? Does it include community-based resources or just the ones that a company has contracted with directly or through their insurance company? Does the company have any legal obligation to pay for these services?

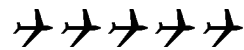
A: This means that the employer must provide general information to employees prior to initiation of testing under the AMPP advising the employees of resources available to them for evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals who can evaluate an employee and determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse, and with information on counseling and treatment programs.

If an employee violates the rule, the employer should at a minimum advise the employee of the substance abuse professional (SAP) the employer has chosen to perform evaluations required under the rule and whom the employer has ensured is qualified to perform such evaluations. Payment for the evaluation and treatment, if any is required, is a matter to be decided by

applicable labor-management agreements or employer policy.



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Division (AAM-800)
400 7th Street, SW, Washington, DC 20590
*Comments or suggestions should be sent
to the above address.*



SUMMARY OF RULEMAKING DOCKETS

Limitation on Alcohol Use by Transportation Workers

[No Docket Number]

February 15, 1994; 59 Federal Register 7302

Final Rule; Common Preamble

Summary: *A common preamble to the alcohol misuse prevention program final rules published by several of the operating administrations of the DOT.*

Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities

FAA Docket Number: 27065

February 15, 1994; 59 Federal Register 7380

Final Rule

Summary: *Established an aviation industry alcohol misuse prevention program, including prohibited alcohol-related conduct, alcohol testing, and employee education.*

*****Included in the March 1994 Special Edition Aviation Drug Abatement *Update*.*****

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

OST Docket Number: 48513

February 15, 1994; 59 Federal Register 7340

Final Rule

Summary: *(1) Established uniform testing procedures that will be used by all DOT operating administrations conducting alcohol testing program.*

(2) Amended the existing OST drug testing procedures to implement the changes required by the Omnibus Employee Testing Act of 1991 (i.e., split sample procedures for drug testing).

Antidrug Program for Personnel Engaged in Specified Aviation Activities

FAA Docket Number: 25148

February 15, 1994; 59 Federal Register 7412

Notice of Proposed Rulemaking

Comments Due: April 18, 1994

Summary: *Proposes modifications to the FAA's existing antidrug regulations to implement the changes required by the Omnibus Employee Testing Act of 1991 (i.e., Prohibition on Service; Rehabilitation and Evaluation; and Split Specimen Testing). Several minor clarifying changes are also proposed.*

Antidrug Program and Alcohol Misuse Prevention Program for Employees of Foreign Air Carriers Engaged in Specified Aviation Activities

FAA Docket Number: 27066

February 15, 1994; 59 Federal Register 7420

Notice of Proposed Rulemaking

Comments Due: May 16, 1994

Summary: *Proposes regulations that would require foreign air carriers to establish drug and alcohol testing programs for employees performing safety-sensitive aviation functions within the United States.*

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

OST Docket Number: 49384

February 15, 1994; 59 Federal Register 7367

Notice of Proposed Rulemaking

Comments Due: May 16, 1994

Summary: *Proposes circumstances in which blood alcohol testing could be used and procedures that would be used for blood alcohol testing.*

Random Drug Testing Program

OST Docket Number: 48498 and FAA Docket Numbers: 25148 and 26604

February 15, 1994; 59 Federal Register 7614

Notice of Proposed Rulemaking

Comments Due: April 18, 1994

Summary: *Proposes calculating the random testing rate based on an industry-wide random testing rate based on data submitted yearly to the FAA. Random testing rates of 25 and 50 percent are proposed.*

Copies of the FAA rules can be obtained by calling (202) 267-3438 or submitting a written request to:

FAA, Office of Public Affairs
Attn.: Public Inquiry Center (APA-230)
800 Independence Avenue, SW
Washington, DC 20591

Rules issued by the DOT/OST are available by calling (202) 366-3784

The dates comments must be received by the FAA or OST are identified above. Late filed comments will be considered to the extent practicable. Each rulemaking action identifies where comments should be sent and the number of copies to send.